

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

AP 1283
16 Apr
Brief

APPELLANT: Mattson

GROUP ART UNIT: 2167

SERIAL NO.: 09/560,067

EXAMINER: O'Connor

FILING DATE: April 27, 2000 ATTY. DOCKET NO.: MAT-P-99-002

INVENTION: "A SYSTEM AND METHOD FOR PROVIDING REAL-TIME
RESTAURANT REVIEWS"

Asst. Commissioner for Patents
Washington, D.C. 20231

RECEIVED
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APPELLANT'S SUPPLEMENTAL APPEAL BRIEF TRANSMISSION LETTER

SIR:

Appellant submits herewith, in triplicate, Appellant's Supplemental Appeal Brief in response to a Decision on a Petition from the Patent Office dated January 31, 2003. Appellant submits that no fee is required for submission of this Supplemental Appeal Brief since a fee for filing the Appeal Brief was previously paid. Appellant, however, authorizes the Patent Office to charge any fees that may be due and owing or to credit any overpayment to Deposit Account. No. 50-0595. A duplicate copy of this sheet is enclosed for this purpose.

Respectfully submitted,

(Reg. No. 35,018)

Brian M. Mattson

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1914 North Milwaukee Avenue

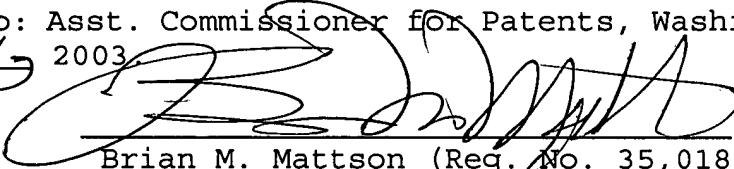
Chicago, IL 60647

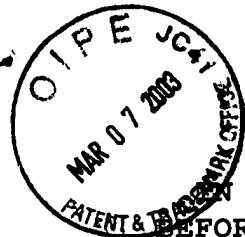
Tel: 773/772-6009



CERTIFICATE OF MAILING

I hereby certify that this **SUPPLEMENTAL APPEAL BRIEF** with **APPENDIX** **CONTAINING CLAIMS 9-14, 21, 22, 24, 25 and 27-29**, and **SUPPLEMENTAL APPENDIX** **CONTAINING EXHIBITS A, B and C** are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Asst. Commissioner for Patents, Washington, D.C. 20231 on Feb 28 2003


Brian M. Mattson (Reg. No. 35,018)



#16

THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT & TRADEMARK OFFICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPELLANT: Mattson

GROUP ART UNIT: 2167

SERIAL NO.: 09/560,067

EXAMINER: O'Connor

FILING DATE: April 27, 2000

ATTY. DOCKET NO.:MAT-P-99-002

INVENTION: "A SYSTEM AND METHOD FOR PROVIDING REAL-TIME RESTAURANT REVIEWS"

Asst. Commissioner for Patents
Washington, D.C. 20231

APPELLANT'S SUPPLEMENTAL APPEAL BRIEF

SIR:

This Appeal Brief is submitted in support of the Notice of Appeal mailed on November 5, 2001. The Appeal was taken from the Final Rejection dated October 30, 2001.

I. REAL PARTY IN INTEREST

Patents+TMS, P.C. is the real party in interest in this Appeal. An Assignment has been filed and recorded in the U.S. Patent Office regarding ownership interest of this application.

II. RELATED APPEALS AND INTERFERENCES

No other appeals or interferences are known to Appellant or Appellant's legal representative which will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.



III. STATUS OF CLAIMS

Claims 9-14, 21, 21, 24, 25, and 27-29 are pending in this patent application. Claims 1-8 and 15-20 were withdrawn from consideration. Claims 23 and 26 were cancelled by an Amendment After Final filed simultaneously with this Supplemental Appeal Brief. Claims 9-14 and 21-29 were finally rejected by the Patent Office in a final rejection dated December 30, 2001. A copy of the claims is appended hereto as the Appendix. The Final Rejection is appended hereto as Exhibit A of the Supplemental Appendix.

IV. STATUS OF AMENDMENTS

All amendments have been entered in this patent application. Claims 23 and 26 were cancelled by an Amendment After Final filed simultaneously with this Supplemental Appeal Brief. Appellant assumes the Patent Office will enter this Amendment After Final pursuant to a Decision on Petition from the Patent Office dated January 21, 2003.

V. SUMMARY OF INVENTION

The present invention generally relates to a method for providing a real-time review of a restaurant. In addition, the present invention provides a method for providing reviews of restaurants and for providing this information to potential patrons 14 outside the restaurant in real-time. (Page 6, lines 30-34 and Page 7, lines 1 and 2)

Referring now to Figures 1 and 2, the invention defines a method wherein a patron 14 of a restaurant transmits information about a restaurant to a computer network, such as, for example, the Internet. An apparatus 16 is provided which may contain a processing unit 52 for entering real-time information regarding a restaurant. The real-time information is then transmitted to a destination remote from the restaurant. (Page 7, lines 20-28)

Alternatively, the apparatus 16 may be a portable device that allows a restaurant patron to input a restaurant review thereinto and posts the information in real-time on the computer network. The apparatus 16 may be, for example, a cellular phone or personal digital assistant having access to the Internet or may be any other like device apparent to those skilled in the art. (Page 8, lines 3-9)

Appellant's invention provides a method for providing information from a patron 14 regarding a restaurant. The method provides a wireless device located in the restaurant wherein the wireless device is used by the patron 14 to input information regarding the restaurant and to transmit the information to a destination outside of the restaurant. (Page 8, lines 6-11)

Providing review information in real-time may allow a potential patron the ability to determine specific characteristics of a plurality of restaurants to determine which restaurant the potential patron may wish to patronize. Further, the potential

patron may receive a plurality of reviews from a plurality of restaurant patrons that are in the same restaurant to obtain a survey of the restaurant from a plurality of points of view. (Page 9, lines 1-8)

Figure 2 shows a black box diagram illustrating a processing unit 52, an input means 54, a display means 56 and a transmission means 58. The patron 14 may use the input means 54 to input specific information about the restaurant into the processing unit 52. The patron 14 may use the display means 56 to review what the patron 14 inputs into the processing unit 52. After the patron 14 has input information concerning the particular restaurant 1 into the processing unit 52 via the input means 54, the patron 14 may send the information via the transmission means 58 to a network 60. The network 60 may be any type of information network, such as, for example, the Internet. (Page 9, lines 12-25)

Connected to the network 60 may be a display means 62 such as, for example, a computer display monitor or any other like display means capable of displaying information thereon. A user may use the display means 62 to view the information posted on the network 60 by the patron 14. Viewing the information posted on the network may be accomplished while the patron 14 is dining at the restaurant. The user may then receive real-time information about the restaurant. The user may then decide whether he wishes to patronize that restaurant or may use the information for any reason

that may be apparent to those skilled in the art. (Page 9, lines 26-33 and Page 10, lines 1-4)

Further, a portable display means 64 may be connected to the network 60 via a portable connecting wire or a radio transmission means via an antenna. For example, the portable display means may be a telephone having a screen thereon whereupon the user may show information posted by the patron 14 in the restaurant. (Page 10, lines 5-10)

VI. ISSUE

1. Would Claims 9-14, 21, 22, 24, 25 and 27-29 have been anticipated by *CyberDiner Internet Café Systems* (hereinafter *CyberDiner*) under 35 U.S.C. §102(b)?

VII. GROUPING OF CLAIMS

Appellant argues for the patentability of independent Claims 9, 21 and 25 separately and apart from one another. In addition, Appellant argues for the patentability of dependent Claims 10-14, 22, 24 and 27-29 separately and apart from the independent claims from which they depend.

VIII. ARGUMENT

A. THE CITED REFERENCES AND REJECTIONS OF CLAIMS 9-14, 21, 22, 24, 25 AND 27-29

Independent Claims 9, 21 and 25, and dependent Claims 10-14, 22, 24 and 27-29 stand rejected under 35 U.S.C. §102(b) as being anticipated by *CyberDiner*.

In the Final Rejection, the Patent Office stated:

Claims 9-14 and 21-29 are rejected under 35 U.S.C. §102(b) as being clearly anticipated by CyberDiner Internet Café Systems, the posting of restaurant reviews at appropriate websites by patrons of the restaurant being an inherent use of the Internet, as demonstrated by the Blue Ginger webpage at the Boston Globe website.

(See Final Rejection, Page 3, lines 6-9 of Exhibit A of the Supplemental Appendix.)

Further, in the Final Rejection, the Patent Office stated:

CyberDiner discloses a restaurant that provides Internet access to each of its patrons at each of the tables when patrons are served. The access provided by CyberDiner is general Internet access to all websites on the Internet. Connection to-hence, ability to use-all such websites is therefore inherently present in the restaurant system of CyberDiner, including connection to and use of such restaurant review websites as the Blue Ginger review at the Boston Globe website, boston.com.

(See Final Rejection, Page 4, lines 11-16 of Exhibit A of the Supplemental Appendix.)

B. CyberDiner DOES NOT ANTICIPATE CLAIMS 9-14, 21, 22, 24, 25 AND 27-29 UNDER 35 U.S.C. §102(b)

With respect to the rejection of Claims 9-14, 21, 22, 24, 25 and 27-29 under 35 U.S.C. §102(b) as being anticipated by CyberDiner, Appellant respectfully submits that the claims distinctly define the present invention from CyberDiner for the reasons that follow.

As previously set forth, independent Claim 9 defines a method

for transmitting real-time information regarding a restaurant by a patron of the restaurant. The method has the steps of: providing a first apparatus having an input means wherein the input means allows entry of the real-time information by the patron of the restaurant. Further, the method requires inputting of the real-time information into the input means of the first apparatus wherein the real-time information regarding the restaurant is then transmitted to a destination remote from the restaurant.

CyberDiner merely discloses a system wherein Internet access is installed within a business, for example, a restaurant. More specifically, *CyberDiner* is a system designed to enable a patron of a store to explore the Internet without the store providing technical support to the patron. Thus, *CyberDiner* merely acts as an installation, maintenance and technical support company that provides Internet access to patrons of businesses.

CyberDiner teaches training to the staff of the business where the Internet access is installed. Further, *CyberDiner* provides on-line help to patrons of the business. Still further, *CyberDiner* provides electronic mail boxes to every *CyberDiner* user. Therefore, *CyberDiner* merely allows an expert or a novice to access the Internet from within a business.

Nowhere in *CyberDiner* is disclosed a method for transmitting real-time information regarding a restaurant by a patron of the restaurant. The method requires providing a first apparatus having

an input means wherein the input means allows entry of the real-time information by the patron of the restaurant. Further, *CyberDiner* does not teach inputting of the real-time information into the input means of the first apparatus wherein the real-time information regarding the restaurant is then transmitted to a destination remote from the restaurant.

Not until Appellant's invention was a method to provide real-time restaurant reviews ever contemplated. Appellant recognized the need to provide current and/or real-time information regarding a restaurant when creating reviews for the restaurant. This need was first identified by Appellant, and Appellant's claimed invention defines a method to effect such reviews. Such a method was never contemplated anywhere or taught anywhere prior to Appellant's invention.

Under 35 U.S.C. §102(b), anticipation requires that a single reference discloses each and every step of Appellant's claimed invention. *Azko N.V. v. U.S. International Trade Commission*, 808 F.2d 1471, 1479, 1 USPQ 2d 1241, 1245 (Fed. Cir. 1986).

Moreover, anticipation is not shown even if the differences between the claims and the reference are "insubstantial" and one skilled in the art could supply the missing steps. *Structure Rubber Products Co. v. Park Rubber Co.*, 749 F.2d. 707, 716, 223 USPQ 1264, 1270 (Fed. Cir. 1984). Since *CyberDiner* does not disclose the steps defined in independent Claim 9, Appellant

submits that the rejection of independent Claim 9 under 35 U.S.C. §102(b) is improper and should be withdrawn. Notice to that effect is requested.

Namely, *CyberDiner* fails to even remotely teach or suggest the input of real-time information regarding a restaurant by a patron of the restaurant. The real-time information is required to include information regarding the restaurant. Nothing in *CyberDiner* teaches or even remotely suggests the input of real-time information regarding the restaurant. In fact, *CyberDiner* only indicates that a patron can both send and receive e-mail messages. Absolutely no suggestion is provided by *CyberDiner* that the information is real-time information regarding the restaurant as required by Claim 9.

Dependent Claim 10 of the present invention requires transmitting the real-time information regarding the restaurant to a display means to be viewed by a patron outside of the restaurant. Nowhere in *CyberDiner* is taught or suggested a method for transmitting real-time information regarding a restaurant, with the steps of independent Claim 9, further including the step of transmitting the real-time information regarding the restaurant to a display means to be viewed by a patron outside of the restaurant.

Transmitting the real-time information regarding the restaurant to a display means to be viewed by a patron outside of the restaurant is an important distinction and requirement of

Appellant's invention because this feature allows a user to view the real-time information regarding the restaurant before deciding on whether to patronize the restaurant. For example, a user may view the real-time information of any number of restaurants before deciding at which restaurant to dine. This feature allows a user to make a decision regarding a restaurant based on real-time information regarding the restaurant.

Dependent Claim 11 of the present invention requires providing a network on which the real-time information is received and stored and further requires the step of retrieving the information from the network. Nowhere in *CyberDiner* is taught or suggested the method of Claim 9 further including providing a network on which the real-time information is received and stored and requiring the retrieval of the information from the network.

Providing a network on which the real-time information is received and stored and further requiring the step of retrieving the information from the network are important distinctions of Appellant's invention because a network provides a central "location" wherein users may store and/or retrieve the real-time information regarding the restaurant.

Dependent Claim 12 of the present invention requires providing a computer network and transmitting the real-time information to the computer network. Nowhere in *CyberDiner* is taught or suggested the method of Claim 9 further including the steps of providing a

computer network and transmitting the real-time information to the computer network.

Providing a computer network and transmitting the real-time information to the computer network are important distinctions of Appellant's invention because the computer network processes the real-time information. Additionally, the information must be capable of access in real-time because the real-time information regarding the restaurant may continuously change. For example, the particular staff cooking or serving the food on a particular day, the freshness of the food, the specials of the day or the wait required for service may be input by a patron, and that real-time information regarding the restaurant may be transmitted to a computer network.

Dependent Claim 13 of the present invention requires providing a website and posting the real-time information on the website. Nowhere in *CyberDiner* is taught or suggested the method of Claim 9 further including the steps of providing a website and posting the real-time information on the website.

Providing a website and posting the real-time information on the website are important distinctions of Appellant's invention because these features allow instant access to the real-time information regarding the restaurant immediately after the review is posted on the website.

Dependent Claim 14 of the present invention requires accessing

the real-time information via a computer. Nowhere in *CyberDiner* is taught or suggested the method of Claim 9 further including the step of accessing the real-time information regarding the restaurant via a computer.

Because *CyberDiner* does not disclose the steps of Appellant's invention defined in dependent Claims 10-14, the rejection under 35 U.S.C. §102(b) is improper and should be withdrawn. Notice to that effect is requested.

Independent Claim 21 defines a method for providing information from a patron regarding a restaurant. The method requires providing a wireless device located in the restaurant wherein the wireless device is used by the patron. The method further requires providing for the input of information into the wireless device and transmitting the information from the wireless device to a destination outside of the restaurant.

Again, *CyberDiner* merely discloses a system wherein Internet access is installed within a business, for example, a restaurant. More specifically, *CyberDiner* is a system designed to enable a patron of a store to explore the Internet without the store providing technical support to the patron. Thus, *CyberDiner* merely acts as an installation, maintenance and technical support company that provides Internet access to patrons of businesses.

CyberDiner teaches training to the staff of the business at which Internet access is installed. Further, *CyberDiner* provides

on-line help to patrons of the business. Still further, *CyberDiner* provides electronic mail boxes to *CyberDiner* users. Therefore, *CyberDiner* merely allows an individual to access the Internet from within a business.

In fact, *CyberDiner* teaches away from Appellant's invention. *CyberDiner* specifically states that the computer must be plugged in. Specifically, *CyberDiner* states "For instillation all you need is a place to put it and a place to plug it in." Therefore, *CyberDiner* teaches away from a wireless device used to input information regarding a restaurant as required by Claim 21 of Appellant's invention. (Page 1, line 5 and Page 6, lines 14 and 15 of Exhibit B)

Further, *CyberDiner* fails to even remotely teach or suggest the input of information regarding a restaurant into a device by a patron of the restaurant. Nothing in *CyberDiner* teaches or even remotely suggests the input of information regarding a restaurant into a device. In fact, *CyberDiner* only indicates that a patron can both send and receive e-mail messages. Absolutely no suggestion is provided by *CyberDiner* that the information obtained via *CyberDiner* is information regarding a restaurant as required by Claim 21.

Nowhere in *CyberDiner* is disclosed a method for providing information from a patron regarding a restaurant wherein a wireless device located in the restaurant is provided and wherein the

wireless device is used by the patron to input information regarding the restaurant and wherein the wireless device is used to transmit the information to a destination outside of the restaurant.

Not until Appellant's invention was a method to provide real-time restaurant reviews ever contemplated. Appellant recognized the need to provide current and/or real-time information regarding a restaurant when creating reviews for the restaurant. This need was identified by Appellant, and Appellant invented a method to effect such reviews based on portable and/or wireless devices that effected the method for providing such a review. Such a method was never contemplated anywhere or taught anywhere prior to Appellant's invention.

Under 35 U.S.C. §102(b), anticipation requires that a single reference discloses each and every step of Appellant's claimed invention. *Azko N.V. v. U.S. International Trade Commission*, 808 F.2d 1471, 1479, 1 USPQ 2d 1241, 1245 (Fed. Cir. 1986).

Moreover, anticipation is not shown even if the differences between the claims and the reference are "insubstantial" and one skilled in the art could supply the missing steps. *Structure Rubber Products Co. v. Park Rubber Co.*, 749 F.2d. 707, 716, 223 USPQ 1264, 1270 (Fed. Cir. 1984). Once again, *CyberDiner* fails to even remotely teach or suggest the input of information regarding a restaurant into a device by a patron of the restaurant and fails

to teach or suggest a wireless device used to accomplish the same. Since *CyberDiner* does not disclose the steps defined in independent Claim 21, Appellant submits that the rejection of independent Claim 21 under 35 U.S.C. §102(b) is improper and should be withdrawn. Notice to that effect is requested.

Dependent Claim 22 of the present invention requires receiving the information regarding the restaurant transmitted by the wireless device on a computer network. Nowhere in *CyberDiner* is taught or suggested the method of Claim 21 further requiring receiving the information regarding the restaurant transmitted by the wireless device on a computer network.

Receiving the information regarding the restaurant transmitted by a wireless device on a computer network is an important distinction of Appellant's invention because a computer network may process a large amount of information. Therefore, the computer network may process multiple inputs of real-time information regarding the restaurant submitted, for example, from the same restaurant to numerous different users for evaluation.

Dependent Claim 24 of the present invention requires the wireless device to be a personal digital assistant. Nowhere in *CyberDiner* is taught or suggested the method of Claim 21 further requiring the wireless device to be a personal digital assistant.

Requiring the wireless device to be a personal digital assistant is an important distinction of Appellant's invention

because personal digital assistants are often carried by individuals and are often used by individuals to organize information, such as dinner plans. Therefore, a wireless personal digital assistant is both portable and capable of receiving information regarding a restaurant to aid the user in, for example, selecting a restaurant based on real-time information regarding the restaurant.

Because *CyberDiner* does not disclose the steps of Appellant's dependent Claims 22 and 24, the rejection under 35 U.S.C. §102(b) is improper and should be withdrawn. Notice to that effect is requested.

Independent Claim 25 defines a method for providing real-time information regarding a restaurant. The method requires providing a portable apparatus operated by a user wherein the portable apparatus has an input means, a wireless transmission means and a display. The method further requires providing a form on the display of the portable apparatus wherein the form includes information that the user implements to enter as the real-time information regarding the restaurant. Further, the method requires providing that the real-time information includes features of the restaurant including at least one of food served at the restaurant, service at the restaurant and ambiance of the restaurant. The real-time information is then input into the portable apparatus by the user and processed. The real-time information is then

transmitted to a destination remote from the restaurant.

Again, *CyberDiner* merely discloses a system wherein Internet access is installed within a business, for example, a restaurant. More specifically, *CyberDiner* is a system designed to enable a patron of a store to explore the Internet without the store providing technical support to the patron. Thus, *CyberDiner* merely acts as an installation, maintenance and technical support company that provides Internet access to patrons of businesses.

Again, *CyberDiner* merely teaches training to the staff of the business at which Internet access is installed. Further, *CyberDiner* provides on-line help to patrons of the business. Still further, *CyberDiner* provides electronic mail boxes to every *CyberDiner* user. Therefore, *CyberDiner* merely allows an individual to access the Internet from within a business.

In fact, *CyberDiner* teaches away from Appellant's invention. *CyberDiner* specifically states that the computer must be plugged in. Specifically, *CyberDiner* states "For installation all you need is a place to put it and a place to plug it in." Therefore, *CyberDiner* teaches away from a wireless device used to input information regarding a restaurant as required by Claim 25 of Appellant's invention. (Page 1, line 5 and Page 6, lines 14 and 15 of Exhibit B)

Nothing in *CyberDiner* discloses a method which provides a portable apparatus operated by a user wherein the portable

apparatus has an input means, a wireless transmission means and a display. Further, *CyberDiner* does not disclose providing a form on the display of the portable apparatus wherein the form includes information that the user implements to enter as the real-time information regarding the restaurant. Still further, *CyberDiner* does not disclose a method wherein real-time information includes features of the restaurant including at least one of food served at the restaurant, service at the restaurant and ambiance of the restaurant. Additionally, *CyberDiner* does not disclose real-time information being input into the portable apparatus by the user and processed. Finally, *CyberDiner* does not disclose real-time information being transmitted to a destination remote from the restaurant.

Not until Appellant's invention was a method to provide real-time restaurant reviews ever contemplated. Appellant recognized the need to provide real-time information regarding a restaurant when creating reviews for the restaurant. This need was identified by Appellant, and Appellant invented a method to effect such reviews based on portable and/or wireless devices that effected the method for providing such a review. Such a method was never contemplated anywhere or taught anywhere prior to Appellant's invention.

Under 35 U.S.C. §102(b), anticipation requires that a single reference discloses each and every step of Appellant's claimed

invention. *Azko N.V. v. U.S. International Trade Commission*, 808 F.2d 1471, 1479, 1 USPQ 2d 1241, 1245 (Fed. Cir. 1986).

Moreover, anticipation is not shown even if the differences between the claims and the reference are "insubstantial" and one skilled in the art could supply the missing steps. *Structure Rubber Products Co. v. Park Rubber Co.*, 749 F.2d. 707, 716, 223 USPQ 1264, 1270 (Fed. Cir. 1984). Again, *CyberDiner* does not teach or suggest a portable apparatus used to transmit information regarding a restaurant and fails to teach or suggest a wireless device used to accomplish the same. Since *CyberDiner* does not disclose the steps defined in independent Claim 25, Appellant submits that the rejection of independent Claim 25 under 35 U.S.C. §102(b) is improper and should be withdrawn. Notice to that effect is requested.

Dependent Claim 27 of the present invention requires the portable wireless apparatus to be a personal digital assistant. Nowhere in *CyberDiner* is taught or suggested the method of Claim 25 further requiring the portable wireless apparatus to be a personal digital assistant.

Requiring the portable wireless apparatus to be a personal digital assistant is an important distinction of Appellant's invention because personal digital assistants are portable devices carried by individuals and may be used by individuals to organize information, such as dinner plans. Therefore, a portable wireless

personal digital assistant capable of receiving information regarding a restaurant aids the user in receiving and/or transmitting real-time information to enable, for example, the selection of a restaurant.

Dependent Claim 28 of the present invention requires the destination remote from the restaurant to be a website. Nowhere in *CyberDiner* is taught or suggested the method of Claim 25 further requiring the destination remote from the restaurant to be a website.

Requiring the destination remote from the restaurant to be a website is an important distinction of Appellant's invention because a website allows instant access to the real-time information regarding the restaurant immediately after the information is posted on the website.

Dependent Claim 29 of the present invention requires the destination remote from the restaurant to be accessible using a portable wireless device. Nowhere in *CyberDiner* is taught or suggested the method of Claim 25 further requiring the destination remote from the restaurant to be accessible using a portable wireless device.

Requiring the destination remote from the restaurant to be accessible using a portable wireless device is an important distinction of Appellant's invention because a user may access information regarding, for example, a plurality of restaurants at

various locations using a portable wireless device.

Because *CyberDiner* does not disclose the steps of Appellant's dependent Claims 27-29, the rejection under 35 U.S.C. §102(b) is improper and should be withdrawn. Notice to that effect is requested.

IX. CONCLUSION

For the foregoing reasons, Appellant respectfully submits that the rejection of Claims 9-14, 21, 22, 24, 25 and 27-29 is erroneous as a matter of law and fact and respectfully requests the Board to reverse the rejection.

Respectfully submitted,


(Req. No. 35,018)

Brian M. Mattson
Appellant and Attorney for Appellant
Patents+TMS
A Professional Corporation
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Chicago, IL 60647

X. TABLE OF CONTENTS

1) APPENDIX: Claims 9-14, 21, 22, 24, 25 and 27-29

2) SUPPLEMENTAL APPENDIX

EXHIBIT A: Final Rejection dated October 30, 2001

EXHIBIT B: *CyberDiner Internet Café Systems* publication

EXHIBIT C: *Blue Ginger* publication

APPENDIX

9. A method for transmitting real-time information regarding a restaurant by a patron of the restaurant, the method comprising the steps of:

 providing a first apparatus having an input means wherein the input means allows entry of the real-time information by the patron of the restaurant;

 inputting the real-time information into the input means of the first apparatus wherein the real-time information includes information regarding the restaurant; and

 transmitting the real-time information to a destination remote from the restaurant.

10. The method of Claim 9 further comprising the step of:

 transmitting the real-time information regarding the restaurant to a display means to be viewed by a person outside of the restaurant.

11. The method of Claim 9 further comprising the steps of:

 providing a network on which the real-time information is received and stored; and

 retrieving the information from the network.

12. The method of Claim 9 further comprising the steps of:

 providing a computer network; and

transmitting the real-time information to the computer network.

13. The method of Claim 9 further comprising the steps of:
providing a website; and
posting the real-time information to the website.

14. The method of Claim 9 further comprising the step of:
accessing the real-time information via a computer.

21. A method for providing information from a patron regarding a restaurant, the system comprising:

providing a wireless device located in the restaurant wherein the wireless device is used by the patron;

inputting information into the wireless device regarding information about the restaurant; and

transmitting the information regarding the restaurant from the wireless device to a destination outside of the restaurant.

22. The system of Claim 21 further comprising:

receiving the information regarding the restaurant transmitted by the wireless device on a computer network.

24. The system of Claim 21 wherein the wireless device is a personal digital assistant.

25. A method for providing real-time information regarding a restaurant, the method comprising the steps of:

providing a portable apparatus operated by a user wherein the portable apparatus has an input means, a wireless transmission means and a display;

providing a form on the display of the portable apparatus wherein the form includes information that the user implements to enter as the real-time information regarding the restaurant wherein the real-time information includes features of the restaurant including at least one of food served at the restaurant, service at the restaurant and ambiance of the restaurant;

inputting the real-time information regarding the restaurant into the portable apparatus by the user;

processing the real-time information input by the user; and
transmitting the real-time information input by the user to a destination remote from the restaurant.

27. The method of Claim 25 wherein the portable wireless apparatus is a personal digital assistant.

28. The method of Claim 25 wherein the destination is a website.

29. The method of Claim 25 wherein the destination is accessible using a portable wireless device.

SUPPLEMENTAL APPENDIX

**UNITED STATES DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/560,067 04/27/00 MATTSON

B MAT-F-99-002

TM02/1030

EXAMINER

PATENTS + TMs
A PROFESSIONAL CORPORATION
THIRD FLOOR
1914 N MILWAUKEE AVENUE
CHICAGO IL 60647

O'CONNOR, G

ART UNIT	PAPER NUMBER
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2167

DATE MAILED:

10/30/01

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks**EXHIBIT A**

TR

Office Action Summary

Application No. 09/560,067	Applicant(s) Mattson
Examiner O'Connor	Art Unit 2167

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.

If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1: X Responsive to communication(s) filed on August 27, 2001 (Amendment "A")

2a: X This action is FINAL. 2b) This action is non-final.

3: Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4: X Claim(s) 1-29 is/are pending in the application.

4a) Of the above, claim(s) 1-8 and 15-20 is/are withdrawn from consideration.

5: Claim(s) _____ is/are allowed.

6: X Claim(s) 9-14 and 21-29 is/are rejected.

7: Claim(s) _____ is/are objected to.

8: Claims _____ are subject to restriction and/or election requirement.

Application Papers

9: The specification is objected to by the Examiner.

10: X The drawing(s) filed on April 27, 2000 is/are objected to by the Examiner.

11: The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12: The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13: Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14: Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15. Notice of References Cited (PTO-892)	18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
16. Notice of Draftsperson's Patent Drawing Review (PTO-948)	19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
17. Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____	20) <input type="checkbox"/> Other: _____

DETAILED ACTION

Preliminary Remarks

1. This Office action has been prepared in response to the amendment and arguments filed by applicant on August 27, 2001 (Paper № 8), in response to the prior Office action.
2. The amendment of claims 9-14 and addition of claims 21-29 are hereby acknowledged.

Election/Restriction

3. Claims 1-8 and 15-20 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention. Election was made **without** traverse in Paper № 6.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the receiving and storing of the information, the website, the posting of information on the website, and accessing the information via a computer, as well as the computer, the destination remote from the restaurant, the wireless device, the cellular telephone, and the personal digital assistant, must all be shown or the feature(s) cancelled from the claim(s). No new matter should be entered.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 9-14 and 21-29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by CyberDiner Internet Cafe Systems, the posting of restaurant reviews at appropriate websites by patrons of the restaurant being an inherent use of the Internet, as demonstrated by the Blue Ginger webpage at the Boston Globe website.

Response to Arguments

7. Applicant's arguments filed August 27, 2001 have been fully considered but they are not persuasive.

8. Regarding the argument that the drawings need not show every feature of the invention specified in the claims, the drawings must indeed show every feature of the invention specified in the claims, as explicitly required by 37 CFR 1.83(a).

9. Regarding applicant's argument that the claims are not anticipated by the *CyberDiner Internet Café Systems* reference because that single reference does not explicitly disclose each

and every element of applicant's claimed invention, the rejection that was made (and has now been made final) under 35 U.S.C. 102(b) addressed the fact that certain elements of the claims were not explicitly disclosed by *CyberDiner*, by explaining that those elements were inherent in *CyberDiner*, hence necessarily present.

"To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill."

Continental Can Co. USA v. Monsanto Co., 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991).

CyberDiner discloses a restaurant that provides Internet access to each of its patrons at each of the tables when patrons are served. The access provided by *CyberDiner* is general Internet access to all websites of the Internet. Connection to--hence, ability to use--all such websites is therefore inherently present in the restaurant system of *CyberDiner*, including connection to and use of such restaurant review websites as the Blue Ginger review at the Boston Globe website, boston.com. See MPEP § 2131.01(III)

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to the disclosure.

11. Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, Jerry O'Connor, whose telephone number is (703) 305-1525.

GJOC



October 26, 2001



10/29/01
ROBERT P. OLSZEWSKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600
10/29/01

Attachment for PTO-948 (Rev. 03/01, or earlier)

6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTO-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

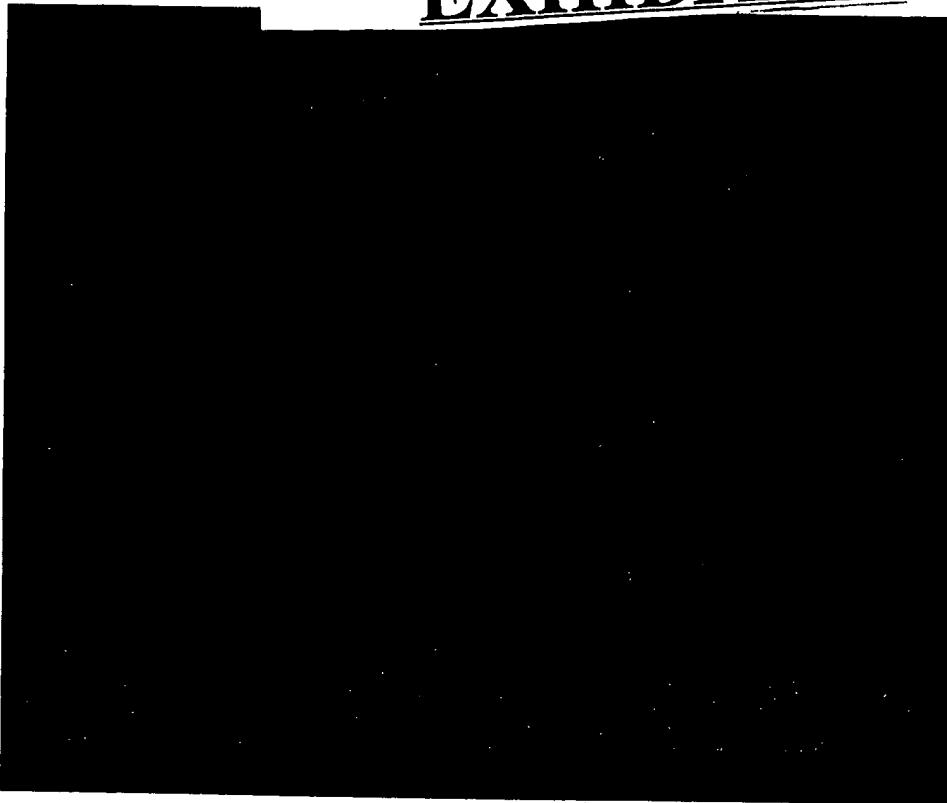
All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.

EXHIBIT B



CyberDiner® Internet Cafe Systems

You can have an Internet Cafe

Welcome to the CyberDiner Company. We will transform any establishment into an Internet Cafe.

CyberDiner is a system which can be installed just about anywhere, which can be run by just about anyone, and which provides full Internet access to the general public in a friendly comfortable atmosphere.

For installation all you need is a place to put it and a place to plug it in. CyberDiner Co. installs and maintains the system, provides training and documentation for the cafe staff. Introductory material and on-line help are also provided for customers.

CyberDiner's simple, friendly interface allows cafe staff to focus on running their business rather than on becoming techies.

The user interface to the CyberDiner is designed to allow anyone, novice or geek, to enjoy exploring the Web. A point and click front end provides a simple path for getting right out on the web. For the more experienced direct access to FTP, Telnet and any other Internet services is available.

Every CyberDiner user is given their own electronic mail box. This means they can both send and receive e-mail messages, globally, across the Net. CyberDiner users can download data to either the system printer or to a floppy disk and take it home.

CyberDiner provides the general public with FULL access to the net.

Get a more complete description of the features the CyberDiner provides both to the end user and to the establishment.

Check out Espresso Biega in Rolling Hills Estates, CA.

Find out more about us at CyberDiner Co.

Send us email with questions, comments, jokes, whatever.

The CyberDiner page of interesting links



Copyright 1998, CyberDiner

CyberDiner

Internet Cafe Systems - 999 North Hill Avenue, Pasadena, CA 91104
http://www.cyberdiner.com - info@cyberdiner.com
(626) 798-0651 - FAX: (626) 398-9675

What is an Internet Cafe?

Simply put an Internet Cafe is a place where people can go to use the Internet. This is not a "virtual cafe" or any kind of an on-line thing. It is a physical place where people can physically go and use the net.

The term comes from the fact that traditionally (if something so new can have a tradition) Internet Cafes have been in actual cafes. Places that serve coffee and other things that go with it.

But an Internet Cafe could be a restaurant, a bar, even a bowling alley. The key is that it is a place where people can go and use the Internet in a social atmosphere.

Internet Cafes serve a number of purposes. First it is a place where people can socialize and enjoy the atmosphere while they surf the net. Second it provides Internet access for those who do not have it elsewhere. Frequently Internet Cafes have training and help available for the new user.

This second purpose is an important one. When the World Wide Web came into existence it became possible for people who were not technically trained to access and use the resources available on the net. But still they had to be technical enough to get access to the net in the first place.

Usually this meant investing in a computer system and dealing with the technical issues of getting connected and on line. The Internet Cafe bridges the final gap between the public at large and the Internet. In a way the Internet Cafe serves the same purpose as the FAX machine at the local copy shop. It provides access to the technology without the individual having to invest in or fully understand it.



[Back to the CyberDiner Internet Cafe Systems home page](http://www.cyberdiner.com/cyd_whatisit.html)



CyberDiner

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http://www.cyberdiner.com - info@cyberdiner.com
(626) 798-0651 - FAX: (626) 398-9675

CyberDiner® Internet Cafe Systems

System features

Features for the End User

- User friendly
- Full Internet Access
- Your Own Personal Account
- Send and receive email
- Take it home with you

Features for the Hosting Establishment

- Ease of installation and startup
- Simple operation
- Minimum time required by personnel
- Ease of maintenance
- Support
- Reporting
- Scalability
- Repeat Business
- Your Own Web Page

[Back to the CyberDiner Internet Cafe Systems home page](#)

User friendly

The whole idea of the CyberDiner system is a system that can be used successfully by just about anyone. It uses a point and click interface that does not require a computer expert to operate. Step-by-step guides are available to guide the new user through the process of getting on line quickly and easily. We believe that the net should be useful and fun. Not technical and difficult. We have done everything possible to bring this about.

[Back to features list](#)

Full Internet Access

The CyberDiner system provides all users with full Internet access. World Wide Web, file transfer, email and the rest of the services available on the net. The user interface makes it easy to get started while allowing the experienced user access to the full range of Internet services.

[Back to features list](#)

Your Own Personal Account

Each CyberDiner customer gets their own account on the system with their own ID and password. This means that you not only have your own email address but also that you can accumulate your own list of favorite places on the net.

[Back to features list](#)

Send and receive email

Since each CyberDiner user gets their own personal account on the system it is possible to both send and receive electronic mail all over the world. You get your own email address that others can use to send email to you.

With the net growing all the time this is like the FAX at the local copy shop has been at the past. You

can take advantage of the technology without having to buy it.

[Back to features list](#)

Take it home with you

The CyberDiner system includes a printer where those things found on the net can be printed. In addition it is possible to download files from the network and take them home on a disk. This includes games, useful programs, pictures and a myriad of information. Thus all the information on the net is available for you to really use.

[Back to features list](#)

Ease of installation and startup

The CyberDiner system is designed to be installed almost anywhere. A central idea is a system which does not need technically trained individuals. CyberDiner Co. takes care of the technical details of establishing the Internet connection. The systems arrive with all software already installed and ready to run. This includes everything from the Netscape browser and other Internet utilities through user management and reporting software.

CyberDiner Co. also works with you to get the physical installation done. Local computer personnel are used to do the physical installation of the system. All we need is a place to put it and a place to plug it in.

[Back to features list](#)

Simple operation

The CyberDiner system allows you to concentrate on being good at your business while making the advantages of high-tech available to you. All of the technical details of running a computer system are handled by CyberDiner Co.

Simple training materials are supplied with every CyberDiner to allow your personnel to get going quickly in putting new customers on the system.

[Back to features list](#)

Minimum time required by personnel

Many Internet Cafes have found themselves too busy helping people with the net to have time for running the restaurant. The CyberDiner comes with simple step-by-step instructions for customers to allow them to get going on the net quickly. Everything from logging into the system to how to find what you are looking for on the net are covered.

With the CyberDiner system everything possible is done to streamline the flow. This provides a more enjoyable experience for the customer and prevents the staff from becoming bogged down in the net.

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Ease of maintenance

Hardware maintenance is contracted to a local computer repair agency. This arrangement is made by the CyberDiner Company. All software maintenance is done by CyberDiner Company via the Internet.

The only thing left for the staff at the site to do is check customers in and take the money.

[Back to features list](#)

Support

Full technical support is provided by the CyberDiner Company to answer questions and handle any problems which arise. CyberDiner company also manages the hardware maintenance to ensure you are provided with excellent service.

CyberDiner technical support is more than just a phone number to call when you have trouble. We take a proactive approach, monitoring your system to fix potential problems before they become real problems.

[Back to features list](#)

Reporting

The CyberDiner software package provides full reporting of both system usage and signup activity. Detail reports are available or summaries by customer or time period. All the information you need about your CyberDiner is at your fingertips.

A side benefit of the CyberDiner system is that when a new customer is added to the system their name, address and phone number are included in the account record. This provides a mailing list of your customers.

[Back to features list](#)

Scalability

The CyberDiner system can grow with your business. Workstations can be added to meet an increasing demand. Where the available phone service permits CyberDiner installs a frame relay connection to the Internet provider. A frame relay line can be upgraded in speed with a minimum effort and expense.

[Back to features list](#)

Repeat Business

An important part of any business is to keep the customers coming back. Part of this is customer satisfaction. The step-by-step instructions and easy user interface make it possible for individuals to quickly come up to speed and find what they are looking for. Every effort is made to ensure customers are successful in their initial sorties into the net.

Another part of keeping customers coming back is the value provided to them. The CyberDiner system is not only fun but full attention has been paid to making it useful as well.

Customers get their own accounts on the system so they can both send and receive email. This provides a valuable service which is not available to many people elsewhere.

The system includes a printer and the ability to copy downloaded files to floppy disk. This gives the customer the ability to keep what they find on the net and further increases the value of the system to the customer.

[Back to features list](#)

Your Own Web Page

Every CyberDiner hosting establishment is provided with a home page on the World Wide Web free of charge. This puts you fully out into CyberSpace making your establishment visible to the world. Not only does this generate business but also helps promote contacts with others around the world.

[Back to features list](#)

**BLUE GINGER
HOURS OF OPERATION**

Monday-Thursday
Lunch 11:30am-2:00pm
Dinner 5:30pm-9:30pm

Friday
Lunch 11:30am-2:00pm
Dinner 5:30pm-10:00pm

Saturday
Dinner 5:30pm-10:00pm

Closed Sunday

Sorry, no reservations via
email

BLUE GINGER

Ming and Polly Tsai opened Blue Ginger in February of 1998, in the Boston suburb of Wellesley, Massachusetts. Designed by both Ming and Polly and in conjunction with a Feng Shui Master, Blue Ginger showcases an open kitchen with a 40 foot blue pearl granite counter, subtle recessed lighting, cream colored walls simply adorned with Vietnamese waterscapes, warm cherry woodwork, Italian granite floors and a soothing water sculpture. The open kitchen creates the perfect stage for the chefs to create Ming's signature East-West dishes.



Photographs by Alan Richardson

Ming's carefully selected staff of chefs and managers ensures the artful execution of his dishes and the smooth functioning of the restaurant each day.

General Manager: Robert Muller
Managers: Paula Pearson, James Giberson
Executive Sous Chef: Thomas Berry
Sous Chefs: Jonathan Taylor, Terrence Maul
Pastry Chef: Marina Brancely
Assistant Pastry Chef: Leah McDowell

EXHIBIT C

Wines from Spain

"Vino with Soul"

Featured wine at Blue Ginger

The Romanticism of Spain is in many ways exhibited in its passionate wines. Along with elegance and charm also comes a comfortable familiarity with Spanish wines, making them perfect for Blue Ginger and the summertime. Whites

with refreshingly crisp acidity and others with rich buttery highlights are abundant. Two classic Spanish reds, Rioja and Ribera Del Duero, display styles ranging from those found in wines of Bordeaux to bold, spicy wines from the Rhone. Many reds have extraordinary flair, and uniqueness, but also impressive value, especially next to counterparts from France and North America. The mystery in Spanish wines has been unveiled however, as wine writers, critics, and connoisseurs all are describing recent vintages as "the wines of the millennium". The marriages of traditional methods of vinification and innovative aging techniques have helped produce some very noteworthy wines. ¡ Pruebenlos y disfrutenlos! Please try them and enjoy. They may just win you over.

MING TSAI

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"At Blue Ginger, I enjoyed one of those meals that reminded me how great chefs can refine ideas the way great musicians refine a riff or interpret a sonata."

John Mariani, Esquire Magazine



Blue Ginger

Reviews

**From Boston Magazine:
The Best of Boston 1998 Restaurant,
New Suburban
Blue Ginger**

"Asian-influenced fusion cuisine has made it to the suburbs. This time around, it is being done with intelligence, restraint, and style, in this case by Ming Tsai, a Yale-educated, French-trained Chinese chef who was a pacesetter in San Francisco and Santa Fe before coming East. Star of a 40-part series on the TV Food Network, Tsai mixes Western (mainly French) and Eastern (mostly Chinese, with a little Japanese thrown in). The resulting dishes, like the fabulous Long Island duck breast marinated with achiote pepper, candied ginger, thyme and garlic, should be enough to get even the most devoted urbanite to venture out to Wellesley."

Blu
M
W
Dir

**From Esquire Magazine
The Best New Restaurants of 1998
Ming Tsai of Blue Ginger
Chef of the Year
By John Mariani**

"My palate had overdosed by the time I sat down at Blue Ginger. But then I ate chef Ming Tsai's tuna carpaccio with crispy rice cake and felt a shimmer on the tongue. I followed it with his foie-gras-stuffed dim sum in a caramelized-onion broth and there were signs of life in my mouth. Then I had a sake-and-miso-marinated Chilean sea bass with a kick of wasabi oil and my mouth was alive. I realized I was eating food I'd never tasted before. I'd certainly eaten similar dishes, and I was familiar with all the ingredients, like kaffir lime and jasmine rice. But never had I seen them combined with such savvy. At Blue Ginger, I enjoyed one of those meals that reminded me how great chefs can refine ideas the way great musicians refine a riff or interpret a sonata."

Sorry, no reservations via email.

MING TSAI

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